

SENATE BILL 354

Q3, K4

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By: **Senators Pinsky, Della, Frosh, Harrington, Lenett, Madaleno, Raskin, Rosapepe, and Stone**

Introduced and read first time: January 28, 2010

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income – Combined Reporting – Pension Sustainability Trust**
3 **Fund**

4 FOR the purpose of requiring certain corporations to compute Maryland taxable
5 income using a certain method; requiring the Comptroller to make certain
6 estimates and distribute certain income tax revenue from corporations to a
7 certain special fund; providing that, subject to regulations of the Comptroller,
8 certain groups of corporations shall file a combined income tax return reflecting
9 the aggregate income tax liability of all the members of the group; requiring the
10 Comptroller to adopt certain regulations; requiring certain regulations to be
11 consistent with certain regulations adopted by the Multistate Tax Commission;
12 establishing the Pension Sustainability Trust Fund; requiring the Secretary of
13 Budget and Management to administer the Trust Fund; providing that the
14 Trust Fund may be used only to transfer certain amounts to the General Fund
15 of the State to offset certain contributions to certain systems of the State
16 Retirement and Pension System; defining certain terms; providing for the
17 application of this Act; and generally relating to the Maryland corporate income
18 tax and the State's contribution to certain plans in the State Retirement and
19 Pension System.

20 BY adding to

21 Article – Tax – General
22 Section 2–613.1 and 10–402.1
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2009 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article – Tax – General
27 Section 2–613.1, 2–614, 2–615, and 10–811
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2004 Replacement Volume and 2009 Supplement)

2 BY adding to
3 Article – State Finance and Procurement
4 Section 7–327
5 Annotated Code of Maryland
6 (2009 Replacement Volume)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article – Tax – General**

10 **2–613.1.**

11 (A) ON OR BEFORE MARCH 1 OF EACH CALENDAR YEAR, THE
12 COMPTROLLER SHALL ESTIMATE THE TOTAL ADDITIONAL INCOME TAX
13 REVENUE FROM CORPORATIONS, IF ANY, THAT WILL BE COLLECTED FOR THE
14 FISCAL YEAR THAT BEGINS ON JULY 1 OF THAT CALENDAR YEAR AS A RESULT
15 OF THE REQUIREMENT UNDER § 10–402.1 OF THIS ARTICLE THAT MEMBERS OF
16 COMBINED GROUPS COMPUTE MARYLAND TAXABLE INCOME USING THE
17 COMBINED REPORTING METHOD.

18 (B) AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2–613 OF
19 THIS SUBTITLE, FROM THE REMAINING INCOME TAX REVENUE FROM
20 CORPORATIONS, THE COMPTROLLER SHALL DISTRIBUTE THE AMOUNT
21 DETERMINED UNDER SUBSECTION (A) OF THIS SECTION TO THE PENSION
22 SUSTAINABILITY TRUST FUND ESTABLISHED UNDER § 7–327 OF THE STATE
23 FINANCE AND PROCUREMENT ARTICLE.

24 [~~2–613.1.~~] **2–613.2.**

25 After making the [~~distribution~~] DISTRIBUTIONS required under [~~§ 2–613~~] §§
26 **2–613 AND 2–613.1** of this subtitle:

27 (1) of the remaining income tax revenue from corporations, the
28 Comptroller shall distribute:

29 (i) for fiscal year 2008 only:

30 1. \$16,000,000 to the Higher Education Investment
31 Fund established under § 15–106.6 of the Education Article; and

32 2. the amount by which 15.15% of the remaining income
33 tax revenue from corporations exceeds \$16,000,000 to the General Fund; and

1 (ii) for each of fiscal years 2009 and 2010 only:

2 1. 6% to the Higher Education Investment Fund
3 established under § 15–106.6 of the Education Article; and

4 2. 9.15% to the General Fund; and

5 (2) for fiscal year 2011 and subsequent fiscal years, the Comptroller
6 shall distribute 15.15% of the remaining income tax revenue from corporations to the
7 General Fund of the State.

8 2–614.

9 (a) After making the distributions required under §§ 2–613 [and 2–613.1],
10 **2–613.1, AND 2–613.2** of this subtitle, the Comptroller shall distribute monthly 24%
11 of the remaining income tax revenue from corporations to a special fund to be
12 distributed as provided in subsection (b) of this section.

13 (b) (1) From the special fund, the Comptroller shall distribute an amount
14 equal to 24% of the cost to administer the income tax on corporations to an
15 administrative cost account.

16 (2) After making the distribution required under paragraph (1) of this
17 subsection, the Comptroller shall distribute the balance in the special fund to the
18 Gasoline and Motor Vehicle Revenue Account in the Transportation Trust Fund.

19 2–615.

20 After making the distributions required under §§ 2–613, [2–613.1, and]
21 **2–613.1, 2–613.2, AND 2–614** of this subtitle, the Comptroller shall distribute the
22 remaining income tax revenue from corporations to the General Fund of the State.

23 **10–402.1.**

24 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
25 MEANINGS INDICATED.

26 (2) “COMBINED GROUP” MEANS:

27 (I) ALL MEMBERS OF A UNITARY GROUP THAT ARE
28 SUBJECT TO THE INCOME TAX OR WOULD BE SUBJECT TO THE INCOME TAX IF
29 DOING BUSINESS IN THE STATE; AND

30 (II) OTHER MEMBERS OF THE UNITARY GROUP NOT
31 DESCRIBED IN ITEM (I) OF THIS PARAGRAPH UNDER THE CIRCUMSTANCES AND
32 TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER

1 TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME OF ANY
2 MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.

3 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF
4 CORPORATIONS:

5 (I) THAT IS ENGAGED IN A UNITARY BUSINESS; AND

6 (II) OF WHICH MORE THAN 50% OF THE VOTING STOCK OF
7 EACH MEMBER IS DIRECTLY OR INDIRECTLY OWNED BY:

8 1. A COMMON OWNER OR COMMON OWNERS, EITHER
9 CORPORATE OR NONCORPORATE; OR

10 2. ONE OR MORE MEMBER CORPORATIONS OF THE
11 GROUP.

12 (B) WHETHER OR NOT THE COMBINED GROUP FILES A COMBINED
13 INCOME TAX RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A
14 COMBINED GROUP SHALL COMPUTE ITS MARYLAND TAXABLE INCOME USING
15 THE COMBINED REPORTING METHOD UNDER THIS SECTION.

16 (C) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS
17 A MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME
18 TAX, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME THAT IS
19 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS
20 CARRIED ON IN THE STATE SHALL BE DETERMINED AS FOLLOWS:

21 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE
22 COMBINED GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE
23 INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING
24 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT
25 CLEARLY THE INCOME OF THE COMBINED GROUP;

26 (2) DETERMINE THE PART OF THE COMBINED GROUP'S
27 MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY
28 ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A
29 MARYLAND APPORTIONMENT FRACTION OF THE COMBINED GROUP, BASED ON
30 NUMERATORS AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES
31 FACTORS UNDER § 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE
32 AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH THE
33 ACTIVITIES OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING
34 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT
35 CLEARLY THE INCOME ALLOCABLE TO MARYLAND; AND

1 **(3) FOR EACH MEMBER OF THE COMBINED GROUP THAT IS**
2 **SUBJECT TO THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE**
3 **AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION TO THAT**
4 **CORPORATION BY MULTIPLYING THE AMOUNT DETERMINED UNDER ITEM (2) OF**
5 **THIS SUBSECTION BY A FRACTION:**

6 **(I) THE NUMERATOR OF WHICH IS THE MARYLAND**
7 **APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING**
8 **THAT CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE**
9 **APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL**
10 **MEMBERS OF THE COMBINED GROUP IN THE DENOMINATORS OF THE**
11 **APPORTIONMENT FORMULA; AND**

12 **(II) THE DENOMINATOR OF WHICH IS THE SUM OF THE**
13 **MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED**
14 **GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.**

15 **(D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER,**
16 **A CORPORATION THAT IS PART OF A COMBINED GROUP MAY ELECT TO**
17 **DETERMINE ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO TRADE OR**
18 **BUSINESS IN THE STATE USING THE WATER'S EDGE METHOD AS DESCRIBED IN**
19 **THIS SUBSECTION.**

20 **(2) UNDER THE WATER'S EDGE METHOD, THE COMBINED GROUP**
21 **FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS**
22 **SECTION SHALL INCLUDE ONLY THE FOLLOWING AFFILIATED ENTITIES:**

23 **(I) CORPORATIONS THAT ARE INCORPORATED IN THE**
24 **UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§**
25 **931 THROUGH 936 OF THE INTERNAL REVENUE CODE;**

26 **(II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS**
27 **DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND**
28 **FOREIGN SALES CORPORATIONS, AS DESCRIBED IN §§ 921 THROUGH 927 OF**
29 **THE INTERNAL REVENUE CODE;**

30 **(III) ANY CORPORATION OTHER THAN A BANK, REGARDLESS**
31 **OF THE PLACE WHERE IT IS INCORPORATED IF THE AVERAGE OF ITS PROPERTY,**
32 **PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR MORE;**

33 **(IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§**
34 **970 THROUGH 972 OF THE INTERNAL REVENUE CODE;**

35 **(V) A FOREIGN CORPORATION DERIVING GAIN OR LOSS**
36 **FROM DISPOSITION OF AN INTEREST IN REAL PROPERTY IN THE UNITED**

1 STATES TO THE EXTENT RECOGNIZED UNDER § 897 OF THE INTERNAL
2 REVENUE CODE; AND

3 (VI) UNDER THE CIRCUMSTANCES AND TO THE EXTENT
4 PROVIDED BY REGULATIONS THAT THE COMPTROLLER ADOPTS:

5 1. A CORPORATION NOT DESCRIBED IN ITEMS (I)
6 THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF ITS INCOME DERIVED
7 FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS
8 FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR

9 2. AN AFFILIATED CORPORATION THAT IS A
10 CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL
11 REVENUE CODE.

12 (3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE
13 TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,
14 INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO
15 PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME FOR ANY
16 PERIOD.

17 (E) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
18 NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.

19 (2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL
20 BE CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF
21 A UNITARY BUSINESS" (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX
22 COMMISSION.

23 10-811.

24 (A) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO
25 REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of
26 corporations [shall file a separate income tax return] ENGAGED IN A UNITARY
27 BUSINESS SHALL FILE A COMBINED INCOME TAX RETURN REFLECTING THE
28 AGGREGATE INCOME TAX LIABILITY OF ALL THE MEMBERS OF THE AFFILIATED
29 GROUP THAT ARE ENGAGED IN A UNITARY BUSINESS.

30 (B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
31 NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.

32 Article – State Finance and Procurement

33 7-327.

1 **(A) IN THIS SECTION, "FUND" MEANS THE PENSION SUSTAINABILITY**
2 **TRUST FUND.**

3 **(B) THERE IS A PENSION SUSTAINABILITY TRUST FUND.**

4 **(C) THE PURPOSE OF THE FUND IS TO OFFSET THE STATE'S COST IN**
5 **MAKING EMPLOYER CONTRIBUTIONS TO THE EMPLOYEES' AND TEACHERS'**
6 **SYSTEMS OF THE STATE RETIREMENT AND PENSION SYSTEM.**

7 **(D) THE SECRETARY OF BUDGET AND MANAGEMENT SHALL**
8 **ADMINISTER THE FUND.**

9 **(E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT**
10 **SUBJECT TO § 7-302 OF THIS SUBTITLE.**

11 **(2) THE STATE TREASURER SHALL HOLD THE FUND**
12 **SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

13 **(F) THE FUND CONSISTS OF:**

14 **(1) REVENUE DISTRIBUTED TO THE FUND UNDER § 2-613.1 OF**
15 **THE TAX - GENERAL ARTICLE;**

16 **(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;**

17 **(3) INVESTMENT EARNINGS OF THE FUND; AND**

18 **(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**
19 **THE BENEFIT OF THE FUND.**

20 **(G) THE FUND MAY BE USED ONLY TO OFFSET THE STATE'S COST OF**
21 **CONTRIBUTIONS TO THE EMPLOYEES' AND TEACHERS' SYSTEMS OF THE STATE**
22 **RETIREMENT AND PENSION SYSTEM.**

23 **(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE**
24 **FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

25 **(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID**
26 **INTO THE FUND.**

27 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
28 **July 1, 2010, and shall be applicable to all taxable years beginning after December 31,**
29 **2010.**